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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,848	12/13/2001	Bruno Colin	BONN-070	1212
32954	7590	10/11/2005	EXAMINER	
JAMES C. LYDON 100 DAINGERFIELD ROAD SUITE 100 ALEXANDRIA, VA 22314			KIM, YOUNG J	
			ART UNIT	PAPER NUMBER
			1637	

DATE MAILED: 10/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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10042005

DATE MAILED:

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Commissioner for Patents

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Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/009,848	COLIN ET AL.	
	Examiner	Art Unit	
	Young J. Kim	1637	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

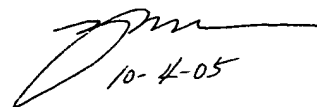
AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

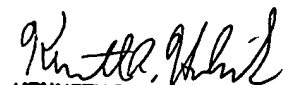
REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: The rejection of claims 21, 22, 24, 32, 37, and 46 under 35 U.S.C. 102(b) as being anticipated by Zanzucchi et al. (U.S. Patent No. 5,755,942) is maintained. Applicants' arguments have been carefully considered in light of the Interview Summary of record. Applicants argue that Zanzucchi et al. fail to disclose or suggest the claimed features of the test card, the feature of which are: a) at least two valves per sequential reaction line; and b) each valve being deformable. Specifically, Applicants argue that Zanzucchi et al. disclose a "disc-shaped" micro laboratory having a plurality of radially disposed modules such that an angle exists between adjacent reaction lines," arguing that therefore, it is, "impossible to use a unique actuator means in order to actuate valves from different reaction lines which are positioned at the same level." (page 5, Response). Applicants state that in a radially disposed disc, the distance between two valves positioned in adjacent reaction lines will decrease rather than remain the same. Additionally, Applicants contend that Zanzucchi et al. fail to disclose a test card having valves comprising at least a means which can be deformed by an actuator. (page 6, Response). In response, the claims are drawn to a product, and not a method. Hence, Applicants' arguments stating that it is impossible to use a unique actuator means in order to actuate valves from different reaction lines are not relevant here. If the device of the prior art meets all of the claimed limitation of the claimed test card, then the prior art properly anticipates the invention under 35 U.S.C. 102(b). With regard to Applicants' arguments drawn to the fact that Zanzucchi et al. disclose a "disc-shaped" micro laboratory having a plurality of radially disposed modules such that an angle exists between adjacent reaction lines, Zanzucchi et al. do disclose at least two sequential reaction lines arranged in parallel (see Figure 8A, as well as 8B which discloses at least two lines feeding the sub module 237 leading to sub module 28 and 274, arranged in parallel). In addition, Figure 8A, depicts multiple reaction lines which are arranged in parallel channeling through plurality of modules. Zanzucchi et al. explicitly disclose that this arrangement allows synthesis of proteins or oligonucleotides, "in parallel." (column 11, lines 57-58). With regard to the "deformable valve" limitation, this limitation has been considered but has not been found persuasive in view of the claim interpretation. The structure disclosed by Zanzucchi et al. in Figure 7C, which comprises a ball (element 162) is a valve as a whole. In other words, it is improper to think of the ball alone as a valve, as a ball is clearly not a valve. However, the ball is used in the channel (162), to form a valve. And the make up of the valve shifts in its shape (thus deformable) in order to control fluid between the wells. Therefore, the valve disclosed by Zanzucchi et al. would anticipate the invention as claimed and Applicants' arguments, unfortunately, are not found persuasive.


10-4-05

YOUNG J. KIM
PATENT EXAMINER


KENNETH R. HORLICK, PH.D
PRIMARY EXAMINER

10/4/05